

1 Forrest G. Buffington  
2 Arizona State Bar No.: 5685  
3 P.O. Box 4690  
4 Yatahey, New Mexico 87375  
5 (505) 905-5000  
6 (505) 905-5001 - fax  
7 forrest@barberborg.com  
8 *Attorney for Plaintiffs*

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

11 Juliette Dixon, Individually  
12 and on behalf of D. Yellow,  
13 V. Yellow, and J. Yellow, Minor Children,

14 Plaintiffs,

15 v.

16 The United States of America,

17 Defendant.

3:15-CV-08284-PGR  
**AMENDED COMPLAINT  
FOR DAMAGES UNDER  
THE FEDERAL TORT  
CLAIMS ACT**

18  
19 For her claim, Plaintiff avers:

20  
21 **OVERVIEW**

22 1. This is a civil action against the United States of America arising from the  
23 death of Jaron Yellow on or about 14 January 2014. Jaron Yellow was arrested by  
24 Bureau of Indian Affairs Police, or the Navajo Nation Police Department, or a  
25 combination of those agencies and entities, at the Village of Moencopi, near Tuba City,  
26 Arizona, and died as a result of acute ethanol poisoning and restraint asphyxia as a  
27  
28

1 consequence of the negligent decisions, acts, and omissions of the law enforcement  
2 agencies involved in Jaron Yellow's detention, restraint, and arrest. It is believed and  
3 alleged that the personnel involved in the detention, restraint, and arrest of Jaron Yellow  
4 were either employees of the Department of Interior of the United States of America, or  
5 of the Navajo Nation as police officers of the Navajo Nation Division of Public Safety, a  
6 tribal program funded by the United States Bureau of Indian Affairs within the  
7 Department of Interior, under the Indian Self-Determination and Educational Assistance  
8 Act, Public Law 96-638, acting within the course and scope of the said contract and in the  
9 course and scope of employment. The defendant United States is answerable for said  
10 negligent decisions, acts, and omissions, pursuant to Public Law 93-638 and the Federal  
11 Tort Claim Act (FTCA), 28 USC §1346(b), and 28 USC §2671, et seq., and also pursuant  
12 to 28 USC §1331.

13  
14 This suit is brought by Juliette Dixon, individually, as mother of Jaron Yellow,  
15 and as guardian and next friend of D. Yellow, V. Yellow and J. Yellow, his minor  
16 children.

17  
18  
19  
20 **JURISDICTION UNDER THE**  
21 **FEDERAL TORT CLAIMS ACT**

22 2. This complaint is brought against the United States of America (hereinafter  
23 "United States") pursuant to the provisions of the Federal Tort Claims Act ("FTCA"), 25  
24 USC §1346(b) and 28 USC §2761, and also pursuant to 28 USC 1331. The FTCA vests  
25 this court with exclusive jurisdiction over plaintiff's claim against the United States for  
26 the negligent acts and omissions of its "employees", which includes the employees of the  
27  
28

1 Navajo Nation Division of Public Safety, and the Bureau of Indian Affairs police.

2 3. The persons who detained, restrained and arrested Jaron Yellow were  
3 "employees of the government" within the meaning of 28 USC §2671 acting in the course  
4 and scope of their employment as agents, servants, and employees of the United States at  
5 all times relevant to the arrest, detention, and restraint of Jaron Yellow.  
6

7 4. At all times material hereto, defendant United States authorized and funded  
8 the Navajo Nation Division of Public Safety pursuant to a contract with the United States  
9 authorized under the Indian Self-Determination and Educational Assistance Act, Public  
10 Law 93-638 (25 USC §450 et seq.).  
11

12 5. In connection with the acts and omissions complained of herein, any  
13 employees of the Navajo Nation Division of Public Safety were acting pursuant to the  
14 aforesaid contract between the United States and the Navajo Nation, in the course and  
15 scope of their employment.  
16

17 6. In connection with the acts and omissions complained of herein, all Bureau  
18 of Indian Affairs police officers involved in the restraint, detention, and arrest of Jaron  
19 Yellow were agents and employees of the United States, acting in the course and scope of  
20 their employment.  
21

22 7. In accordance with Public Law 93-638, or Public Law 100-297, or both, the  
23 Navajo Nation division of Public Safety is Deemed to be an agency or instrumentality of  
24 the United States for the purpose of FTCA liability.  
25

26 8. The United States is the proper defendant for tort claims against the Navajo  
27 Division of Public Safety and its employees for acts and omissions under their contract  
28

1 pursuant to Public Law 93-638 under 28 USC §2674, and for the negligent acts and  
2 omissions of its own agents and employees.

3 9. Plaintiffs submitted timely administrative claims to the United States  
4 Department of the Interior under the FTCA for damages. Exhibits 1, 2. The claims  
5 sought damages, as required by federal law, for sums certain, for the death of Jaron  
6 Yellow. The Department of the Interior has formally denied the claims. Exhibit 3.  
7 Plaintiff has exhausted her administrative remedies as required by the FTCA and has  
8 filed this complaint within six months after the claim was denied by the United States.  
9 See, 28 USC § 2401(b) and 39 C.F.R. §912.9. Plaintiffs are thus authorized by federal  
10 law to file this action against the United States at this time and this court has jurisdiction  
11 to entertain the action. There are no defects of jurisdiction and no failure to exhaust  
12 administrative remedies.  
13  
14  
15

### 16 **PARTIES**

17 10. Plaintiff Juliette Dixon is a resident of Kayenta, Arizona.

18 11. Plaintiff Juliette Dixon is the guardian of D. Yellow, V. Yellow, and J.  
19 Yellow, the minor children of Jaron Yellow pursuant to an order of the Navajo Nation  
20 Family Court, Kayenta District court, Cause No. KY-FC-515-2014 entered on 29 March  
21 2015.  
22  
23

24 12. The Navajo Division of Public Safety is a governmental department within  
25 the Navajo Nation that provides police services to the Navajo Nation. It is operated by  
26 the Naavajo Nation under contract with the United States Department of the Interior  
27 pursuant to a contract authorized under the Indian Self-Determination and Educational  
28

1 Assistance Act, Public Law 93-638; 25 USC § 450 et seq..

2 13. The Bureau of Indian Affairs is a Bureau of the Department of the Interior  
3 of the United States, providing law enforcement services in certain areas of Indian  
4 Country, including the Hopi Indian reservation.

5  
6 14. Moencopi Village is part of the Hopi Indian reservation.

7 15. The arrest of Jaron Yellow occurred at Moencopi Village.

8  
9 16. The negligence of employees of the Navajo Nation Division of Public  
10 Safety acting pursuant to a contract pursuant to Public Law 93-638, and of the United  
11 States Bureau of Indian Affairs, in the course and scope of their employment, is imputed  
12 to the United States to the same extent as if they, and it, were private persons subject to  
13 the laws of the State of Arizona, pursuant, inter alia, to 28 USC §1346(b); Public Law 93-  
14 638; and Public Law 10-297, the United States is similarly liable for the negligent acts  
15 and omissions of the employees of the Bureau of Indian Affairs and the Navajo Nation  
16 division of Public Safety for the negligent hiring, training and supervision of the  
17 employees who detained, restrained, and arrested Jaron Yellow.  
18  
19

20 **VENUE**

21 17. All events complained of herein occurred in the State of Arizona. Venue in  
22 this district is proper pursuant to 28 USC §1402 (b).  
23

24 **FACTS OF THE OCCURRENCE**

25 18. On or about 13 January 2014, Jaron Yellow was detained, restrained, and  
26 arrested after an altercation and struggle, in Moencopi Village, by Bureau of Indian  
27 Affairs police, or officers of the Navajo Nation Department of Public Safety, or both.  
28

1           19. On the same date, subsequent to his arrest, Jaron Yellow was arrested,  
2 restrained and detained by the officers of the Navajo Nation at the direction or request of  
3 the Bureau of Indian Affairs police.

4           20. At and immediately after the time of his arrest, Jaron Yellow was acutely  
5 intoxicated.

6           21. It was, or should, reasonably have been, apparent to the officers detaining,  
7 restraining, and arresting Jaron Yellow that he was acutely intoxicated, and to a degree  
8 that required immediate medical assessment and intervention.

9           22. It was, or should have reasonably have been apparent, to the officers  
10 detaining, restraining, and arresting, Jaron Yellow, that, due to the recent struggle, his  
11 acute intoxication, recent exposure to pepper spray, and large physical build, that Jaron  
12 Yellow was at risk from restraint and positional asphyxia.

13           23. Medical assessment and intervention was available at approximately five  
14 minutes' distance, at the Tuba City United States Public Health Service contract hospital.

15           24. Notwithstanding Jaron Yellow's apparent acute intoxication, need for, and  
16 the proximity of, medical assessment and intervention, the officers detaining, restraining,  
17 and arresting Jaron Yellow, negligently placed him in a position in which his breathing  
18 was restricted and kept him for approximately one hour face down in a police patrol unit.

19           25. During this time, it became apparent to the officers detaining him that he  
20 was unresponsive, and they belatedly sought medical intervention for Jaron Yellow.

21           26. Jaron Yellow suffered anoxic brain injury from acute ethanol poisoning and  
22 positional asphyxia during his detention, and was pronounced dead on the next day, 14

1 January, 2014, from the effects thereof.

2 **COUNT 1**  
3 **NEGLIGENCE**

4  
5 27. Paragraphs one through 26 are incorporated by reference.

6 28. The law enforcement officers and personnel who detained, restrained, and  
7 arrested Jaron Yellow knew, or reasonably should have known that Jaron Yellow was at  
8 risk of death or anoxic brain injury from restraint and positional asphyxia, and death from  
9 ethanol intoxication.  
10

11 29. The law enforcement personnel who detained, restrained, and arrested Jaron  
12 Yellow knew, or reasonably should have known, they had a duty to observe Jaron  
13 Yellow, and seek immediate medical attention for him.  
14

15 30. Immediately upon or after his arrest Jaron Yellow became unresponsive.

16 31. Notwithstanding the risks to Jaron Yellow, the law enforcement personnel  
17 who restrained, detained, and arrested him negligently maintained him in restraint longer  
18 than necessary, maintained him in a position in which he was at risk from restraint and  
19 positional asphyxia, failed to observe him, and failed to secure medical attention for him  
20 when they knew or should have known he required medical attention.  
21  
22

23 32. As a direct and proximate result of the actions, and inactions of the law  
24 enforcement personnel who restrained, detained, and arrested Jaron Yellow, he suffered  
25 anoxic brain injury and died.  
26  
27  
28

**NGLIGENT TRAINING, ADMINISTRATION**  
**AND SUPERVISION**

33. Paragraphs one through thirty two are incorporated by reference herein.

34. The United States and the Navajo Nation Division of Public Safety had a duty to train their respective officers and employees in the dangers presented by acute ethanol intoxication and restraint and positional asphyxia.

35. The United States and the Navajo Nation Division of Public Safety knew or should have known of the dangers presented by acute ethanol intoxication and positional and restraint asphyxia.

36. Acute ethanol intoxication and situations requiring restraint are usual and recurring for law enforcement agencies in the area of Moencopi.

37. Notwithstanding their knowledge of the dangers to arrested subjects of positional and restraint asphyxia, and of acute ethanol intoxication, the United States and the Navajo Nation Division of Public Safety negligently failed to train and supervise the personnel who restrained, detained, and arrested Jaron Yellow in the dangers of acute ethanol intoxication, and of positional and restraint asphyxia, and prevention of death arising there from, and failed to make, adopt, and enforce standards to avoid restraint and positional asphyxia, and death from acute ethanol poisoning.

38. As a consequence of the above-alleged failure to train and supervise in the dangers of restraint and positional asphyxia and acute ethanol intoxication and to make, adopt and enforce standards to prevent the same, Jaron Yellow died.



**DAMAGES**

39. Paragraphs one through thirty eight are incorporated by reference.

40. As a direct and proximate result of the death of Jaron Yellow, Plaintiff and the children of Jaron Yellow have suffered and will continue in the future to suffer losses and damages, including but not limited to; the loss of Jaron Yellow's love, affection, companionship, care, protection, and guidance; pain, grief, sorrow, anguish, stress, shock and mental suffering; loss of income and services; and the expense of funeral and burial.

WHEREFORE, Plaintiff prays for herself and her minor children for judgment against the United States for such damages as are available to them under the law of the United States and Arizona, costs of suit, and such other and further relief as to which the law and proof shall deem them entitled.

Respectfully submitted,

BARBER & BORG, LLC

By: /s/Forrest G. Buffington  
Forrest G. Buffington, Esq.  
P.O. Box 4690  
Yatahey, NM 87375  
505-905-5000  
Email: forrest@barberborg.com  
Attorneys for the Plaintiff

1 Approved as to form by:

2  
3 /s/Laurence G. Tinsley, Jr., with permission  
4 Assistant United States Attorney  
5 for Defendant United States of America  
6 By e-mail 09/30/2016

7 /s/Josh Montagnini with permission  
8 Mason & Isaacson, P.A.  
9 for Navajo Nation  
10 by e-mail 09/30/2016  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28